

EXHIBIT A

5-31-06 suppression hearing transcript.txt

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65VVVILH

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v.

05 CR 621 (KMK)

ALBERTO VILAR,
GARY TANAKA

SUPPRESSION HEARING

Defendants.

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New York, N.Y.
May 31, 2006
10:05 a.m.

Before:

HON. KENNETH M. KARAS,

District Judge

APPEARANCES

MICHAEL J. GARCIA
United States Attorney for the
Southern District of New York
DEIRDRE MCEVOY
MARC LITT
Assistant United States Attorneys

HOFFMAN & POLLOK
Attorneys for Defendant Alberto Vilar
JEFFREY C. HOFFMAN
SUSAN C. WOLFE

Attorneys for Defendant Gary Tanaka:

WILSON SONSINI GOODRICH & ROSATI
GLENN CHARLES COLTON

-AND-

KOBRE & KIM
STEVEN GARY KOBRE

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(In open court)
(Case called)

THE DEPUTY CLERK: United States of America versus
Alberto Vilar and Gary Tanaka. Criminal cause for suppression
hearing. If counsel can state their appearances for the record
please.

MS. MCEVOY: Deirdre McEvoy and Marc Litt for the
government. Good morning, your Honor. With us is Postal

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5 congregated in the reception area, with a few exceptions, one
6 of which was the COO, David Mainzer, was in his office, and
7 that's where I went.
8 Q. Okay. And how many agents were in the office that day?
9 A. I didn't count them. My sense was there were about a dozen
10 or so.
11 Q. Did there come a time during the day that you spoke to
12 Assistant United States Attorney Marc Litt?
13 A. Yes.
14 Q. Do you recall what time that was?
15 A. I don't. I know that I called him prior to returning to my
16 office at K&L, which I think I did about 1 o'clock.
17 Q. And did you have a discussion with him about a subpoena?
18 A. I had a discussion, I had several discussions with him,
19 including about a subpoena.
20 Q. Can you tell us, did you have a number of conversations,
21 different conversations, with him throughout the day?
22 A. I did.
23 Q. During the first conversation, did the subject of a
24 subpoena come up?
25 A. Not that I recall.

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65VVVILH Licker - direct

1 Q. During the second conversation, did the subject of a
2 subpoena come up?
3 A. It's hard to number the conversations. I can't say whether
4 it was the second or the third. It was sometime after the
5 first.
6 Q. Okay. Do you recall what time during the day this subject
7 came up?
8 A. I believe it came up prior to the time I returned to my
9 office at K&L which, as I said, I thought I place at about 1
10 o'clock.
11 Q. And what was the substance of the conversation?
12 A. At some point I became aware, I think, from speaking to Mr.
13 Feiter, Inspector Feiter, Postal Inspector Feiter, that they
14 had doubts about their abilities, the inspector had their
15 doubts about their ability to complete the search that day.
16 And someone, I don't remember if it was me or if it
17 was Marc Litt, I don't believe it was me, but someone suggested
18 that, as an alternative, if we would continue our agreement to
19 preserve the documents, we had already had that conversation,
20 and accept service of a grand jury subpoena that would allow
21 the postal inspectors to leave.
22 Q. You mentioned that you had a conversation about preserving
23 the contents of the office?
24 A. We had a general conversation about preserving relevant
25 information, wherever it was found.

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65VVVILH Licker - direct

1 Q. Did you see the search warrant that was executed that day?
2 A. I believe I did.
3 Q. Do you recall whether you read it?
4 A. I am sure I looked at it. I can't say that I studied it.
5 Q. There came a time when you received -- you actually
6 received a subpoena from Mr. Litt, right?
7 A. Correct.
8 Q. Do you recall what time of day that was?
9 A. I don't recall, but it was faxed to me in my office at K&L.

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65VVVILH Licker - redirect
1 overwhelming view, as I've said several times, was that we were
2 going to cooperate.
3 THE COURT: Okay. All right.
4 Q. And to the extent that the subpoena and the search warrant
5 called for the same materials, did you believe you had a right
6 not to -- or to challenge the subpoena?
7 A. I did not go through that analysis.
8 Q. But the purpose of -- or at least one of the purposes of
9 the subpoena was to allow the postal inspectors to go home and
10 not to continue searching and seizing the documents called for
11 by the search warrant, right?
12 MS. MCEVOY: Objection.
13 THE COURT: From his perspective, I think he can
14 answer that. From your perspective, was that one of the
15 purposes of the subpoena?
16 THE WITNESS: I certainly had that conversation with
17 Marc Litt.
18 THE COURT: When you say that one idea was to let the
19 postal inspectors go home, was it the idea that they would go
20 home the minute you got the subpoena, or is it that they just
21 wouldn't come back another day?
22 THE WITNESS: We didn't get as specific as go home the
23 minute we got the subpoena. And I didn't really expect them to
24 just turn around and leave. Indeed, it took them hours to pack
25 up.

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65VVVILH Licker - redirect
1 THE COURT: Okay.
2 BY MS. WOLFE:
3 Q. When you say that it was your intention on behalf of
4 Amerindo to cooperate with the government, would that include
5 allowing a dozen government agents to search and seize
6 documents from the offices without a search warrant?
7 A. You're asking me a hypothetical. I'm not sure. I would
8 have to think about that.
9 MS. WOLFE: I have no further questions.
10 THE COURT: Okay. Mr. Colton.
11 MR. COLTON: Briefly.
12 THE COURT: Sure.
13 DIRECT EXAMINATION
14 BY MR. COLTON:
15 Q. Mr. Licker, you remarked a couple of times about the state
16 of your memory, so I just want to go back over one or two
17 things quickly.
18 As you sit here today, do you have any doubt that you
19 had not in your legal career previously experienced a grand
20 jury being served during a search warrant?
21 THE COURT: A grand jury subpoena.
22 Q. Grand jury subpoena being served during a search warrant
23 execution.
24 A. I am certain I have not experienced that.
25 Q. Are you also certain as you sit here today that you have

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65VVVILH Licker - direct
1 never heard of a grand jury subpoena being served during the
2 execution of a search warrant?

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- 3 A. I don't believe I have.
4 Q. There was a discussion with Ms. McEvoy about the effort you
5 and your team put into gathering documents in response to the
6 subpoena, do you recall that?
7 A. Yes.
8 Q. Is it fair to say that there would be substantial
9 additional effort that would be required in order to fully
10 comply with every one of the A through W or X of the subpoena?
11 A. We've reviewed about half the documents that were on the
12 premises.
13 Q. Would it be fair to say that that's an expensive process?
14 A. Yes.
15 Q. Does the company have a substantial cash reserve?
16 A. No.
17 Q. Does the company have a substantial cash inflow?
18 A. The company is out of business.
19 Q. Why?
20 A. Because the two individuals who were the portfolio managers
21 are not functioning in that capacity.
22 Q. Had there not been a search warrant, but, instead, a grand
23 jury subpoena at the beginning of the day, would the company
24 potentially still be functioning?
25 A. I believe so.

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65VVVILH Licker - direct

- 1 Q. And when we discussed the compliance with the subpoena, had
2 there not been any motion to quash, you and your team certainly
3 would have conducted a privilege review to avoid divulging
4 privileged information, correct?
5 A. Yes.
6 Q. And there would have been substantial effort to create what
7 is known in the legal community as a privilege log?
8 A. Yes.
9 Q. And that too would have been an expensive proposition?
10 A. Yes.
11 Q. And in your view, given that there was either going to be
12 or there was the pendency of a motion to quash the subpoena, it
13 would be unwise to undertake all of that expense on behalf of
14 an ailing or basically dead company until the Court ruled on
15 that issue?
16 A. That's why we stopped our efforts.
17 MR. COLTON: One moment, your Honor.
18 THE COURT: Sure.
19 (Pause)
20 MR. COLTON: Nothing further, your Honor.
21 THE COURT: All right. Ms. McEvoy, any recross? I
22 guess that would be a yes.
23 MS. MCEVOY: Yes, sorry.
24 RECROSS EXAMINATION
25 BY MS. MCEVOY:

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65VVVILH Licker - recross

- 1 Q. Mr. Licker, you testified that you observed the postal
2 inspectors taking some hours to pack up.
3 A. It took them a very long time. I can't say exactly how
4 long.
5 Q. Excuse me?
6 A. I can't say exactly how long, but it took them a long time.
7 Q. When you returned to Amerindo's offices that afternoon on